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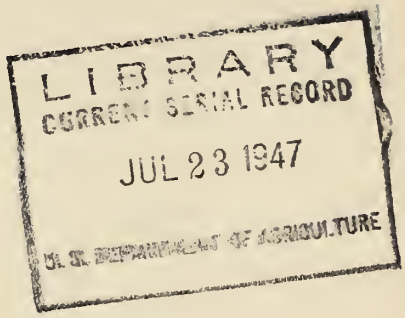
UNITED STATES DEPARTMENT OF AGRICULTURE
FARM CREDIT ADMINISTRATION
WASHINGTON, D. C.



SUMMARY OF CASES

RELATING TO

FARMERS' COOPERATIVE ASSOCIATIONS

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For the

COOPERATIVE RESEARCH AND SERVICE DIVISION

Summary No. 34 June 1947

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Deductible or Taxable

In the case of In Re General Film Corporation, 274 F. 903, the question arose in this bankruptcy proceeding of whether the trustee in bankruptcy was required to pay to the United States certain amounts alleged to be due as Federal income taxes, or whether the amounts on which the claim for income taxes was based were duductible in determining the income tax liability involved.

If the sums in question constituted an expense they were, then, deductible from gross income, and hence no income taxes could be required to be paid on their account. On the other hand, if the sums constituted a part of the net income of the association, income taxes were due thereon. The court stated that, "The question is one purely of law, viz., whether the amount which the trustee seeks to deduct from the bankrupt's gross income as an expense of operation is such or is, as the Government claims, a distribution of net profits." (Underscoring added.)

> "April 21, 1910, the bankrupt had contracted with ten manufacturers of moving picture films to lease their films at 9 cents a foot plus a payment at the end of the year. Article 8 of the agreement regulating this additional payment reads:
>
> "'The party of the second part further covenants and agrees that it will, in addition to the leasing prices hereinbefore referred to, pay to the party of the first part, at the end of each year during the continuance of this agreement, the following share of the net profit realized by it during that year from the subleasing and leasing, as aforesaid, of "Licensed Motion Pictures" to exhibitors and from the sale of "Licensed Projecting Machines," and from all other sources, to wit, such a proportion of the balance, if any, of such net profit, remaining after deducting therefrom the dividend of seven percent (7%) for that year on its issued preferred stock and an amount equal to a twelve percent (12%) dividend on its issued common stock, as the number of running feet of "Licensed Motion Pictures" leased by it from the party of the first part during that year bears to the total amount of running feet of "Licensed Motion Pictures" leased by it from all "Patents Company Licensees aforesaid" during that year ("Licensed Motion Pictures" manufactured for or purchased by the party of the second part, as aforesaid, as well as "Licensed Motion Pictures" leased to it by "Patents Company Licensees aforesaid" producted from negatives made on its order, to be excluded).'
>
> "The common stock of the bankrupt was $100,000 in 10,000 shares of $10 each, and each of the ten manufacturers originally owned 1,000 shares. The Government contends that this fact, together with the fact that the extra footage charge was to come out of the net profits after deducting 7 percent dividend on the preferred and 12 percent on the common stock, shows that the payment is really a declaration of a dividend to the manufacturers and not a payment of rent for the films leased from them. There is undoubtedly great force in this argument. On the other hand, the charge of

nine cents a foot for the films was shown to be much below what they seem to have been worth, and the additional payment was not to be made to the manufacturers in proportion to the stock they held, but in proportion to the amount of film footage each had furnished the bankrupt during the year. They furnished different amounts and were entitled to their proportion of the surplus without any reference to the amount of their stockholding or even if they held no stock at all. The question is one of intention, and we are not disposed to disturb the construction which the referee and the court below put upon the contract." (Underscoring added.)

As shown in the quotation from the agreement entered into by the bankrupt corporation with the ten manufacturers of film, the bankrupt corporation agreed to pay to each of the ten manufacturers 9 cents a foot for film plus an additional payment to be made at the end of the year, to be determined with reference to the net profits of the bankrupt corporation.

The right to contract is one of the most fundamental and comprehensive rights established by law, and ordinarily a buyer may agree to pay for any product which he is purchasing on any basis that is mutually acceptable. It is believed that the use of the term "net profit" in the agreement between the bankrupt corporation and each of the ten film companies contributed to confusion in determining the question of whether the amount that had been distributed among the ten film companies on a patronage basis was a deductible item in the nature of an expense, or was actually a distribution of profits. Clearly, if the amount in question had constituted a distribution of profits it would not have been excludable, but on the other hand income taxes would have been due thereon.

Apparently the court proceeded upon the theory that when the term "net profit" was used in the agreement, what was actually meant was the amount remaining after meeting overhead costs and expenses and which was due on a film basis to the ten manufacturers as additional payment for film according to the contract.

Of course the name applied to any amount of money or to a transaction is not controlling, as the facts involved determine the status of the money or the character of the transaction; but names have been held to be important in determining the character of the transaction to which they have been applied. The use of the term "net profit" was particularly inept because net profit customarily describes what is left after all overhead and operating expenses have been met. Because the bankrupt corporation was under a contractual obligation to pay to each of the ten film companies not only 9 cents a foot for film leased but also an amount over and above operating and maintenance cost and expenses to be ascertained at the end of the year and which was to be paid to each of the film companies on a patronage basis, it was held that this additional amount was deductible in computing the income taxes due by the trustee of the bankrupt corporation.

In the case of United States of America v. Local 36 of the International Fishermen & Allied Workers of America, et al., No. 18842 (Criminal), in the District Court of the United States for the Southern District of California, Central Division (unreported), it appeared that this so-called union was indicated, charged with violating the Sherman Antitrust Act. In addition to the union, a number of individuals who were identified therewith were indicted.

The following quotations from the indictment disclose the basis therefor:

> "11. The fishermen who are members of Local 36, IFAWA are not employees, workers, or laborers who receive a salary or wage for their work or labor, but are independent businessmen engaged in business on their own account, and who operate fishing boats for their own account and profit. No employer-employee relationship exists between these fishermen and the dealers to whom their catch is sold. The fishermen members of Local 36 IFAWA, sell their catch directly to dealers, and do not act collectively through Local 36, IFAWA, in catching, producing, preparing for marketing, processing, and handling their catch. Except for the illegal restraints described hereinafter, a much greater volume of fresh fish and crustaceans would have been brought to the fishing ports named herein and sold, processed and distributed from those ports in interstate commerce.
>
> "THE CONSPIRACY"
>
> "12. Beginning some time prior to May 1946, the exact date being unknown the Grand Jurors, and continuing thereafter up to and including the date of the return of this Indictment, the defendants named herein, together with other persons to the Grand Jury unknown have knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out in part within the Southern District of California, Central Division, to fix, determine, establish, and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans, which combination and conspiracy has been in restraint of the aforesaid trade and commerce, in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (26 Stat. 209, 15 U.S.C., Section 1), commonly known as the Sherman Act.
>
> "13. The aforesaid combination and conspiracy has consisted of a continuating agreement and concert of action among the defendants, the substantial terms of which have been that defendants
>
> > "(a) agree to six minimum prices to be charged by the fishermen for the sale of fresh fish and crustaceans caught by said fishermen in the fishing area and thereafter sold by the fishermen to dealers;

"(b) agree that with respect to all types of fresh fish and crustaceans for which a price is set by the Office of Price Administration the maximum price set by the OPA shall be the minimum price to be paid to fishermen by the dealers;

"(c) agree that when ceiling prices set by the Office of Price Administration for fresh fish and crustaceans caught by fishermen are removed, that the maximum prices theretofore fixed by the Office of Price Administration shall be and remain the minimum prices at which a fisherman shall sell fish caught by him to dealers;

"(d) agree that when the Office of Price Administration has not fixed a ceiling price for fish and crustaceans caught by fishermen, Local 36, IFAWA shall agree with the dealers on the price to be paid the individual fishermen who are members of said Local 36, IFAWA;

"(e) agree that the prices of fish sold by the fishermen members of Local 36, IFAWA shall be stabilized and non-competitive;

"(f) agree to reduce the foregoing agreement and understanding described in Paragraph 13, (a) to (e), inclusive, to written contract form, and to impose said contract upon fish dealers who refuse to sign the same by picketing and boycott methods, and to prefer fish dealers who sign said written contract, and to refuse to sell or deliver any fish caught by fishermen members of Local 36, IFAWA to fish dealers who do not enter into said contract;

"(g) agree to prevent fish dealers who do not enter into said agreement and contract from securing any supply of fresh fish or crustaceans from any other fishermen or other source by boycotting and establishing picket lines around the places of business of such dealers;

"(h) agree to prevent fish dealers who do not enter into the aforesaid agreement and contract from shipping or otherwise transporting through their own or other means of transportation any fish purchased or acquired by said dealers;

"(i) agree to boycott and picket any concern or individual accepting from dealers who do not enter into said written contract, any fresh fish or crustaceans for shipment from said fishing ports to points in or outside the State of California;

"(j) agree to boycott and picket any concern or individual delivering or attempting to deliver to the usual place of business of non-signing dealers, any fresh fish or crustaceans shipped to the usual place of business of such non-signing dealers, by brokers or other dealers located in and outside the State of California;

"(k) agree to prevent fishermen who are not members of Local 36, IFAWA, from fishing and delivering any fresh fish or crustaceans caught by said fishermen to anyone other than a dealer signing the aforesaid written contract and only to such dealer after said non-member fishermen had picketed non-signing dealers, or in lieu thereof, had paid to Local 36, IFAWA a stipulated picket fee." (Underscoring added.)

On May 7, 1947, the jury rendered a verdict in favor of the Government in this case.

On November 12, 1946, the trial judge filed a memorandum overruling, among other things, motions to dismiss made by the defendants. In this connection the court said in part:

"The Defendant's contention that it is exempted from the Sherman Act under the provisions of the Fishermen's Cooperative Marketing Act, 15 U.S.C. 521, must be rejected under the holding in the Hinton case, 131 Fed. (2) 38, where the contention was specifically rejected upon the authority of U.S. v. Borden, 308 U.S. 188."

Attention is called to the fact that the fishermen were not acting collectively through an association with respect to any matter or thing connected with the obtaining and sale of the fish. Apparently each fisherman was simply agreeing with every other fisherman in the union in regard to the prices that he would charge for fish.

Many of the activities on which the indictment was based do not appear to be activities that are appropriate for a cooperative association under the Capper-Volstead Act, or under the corresponding act for fishermen, the Fishermen's Cooperative Marketing Act, 15 U.S.C. 521.

In this connection it will be remembered that the Capper-Volstead Act does not authorize restrictions on production.

It is not believed that the Capper-Volstead Act nor its counterpart relative to fishermen authorize associations that meet the conditions of these statutes to engage in conduct or acts that are unlawful for other business concerns.

The case of Columbia River Packers Association v. Hinton, 315 U.S. 143, 62 S. Ct. 520, 86 L.Ed. 441, established that independent fishermen when they form a so-called union do not have the status of employees but on the contrary are simply in business for themselves.

Agricultural Labor
As Defined By the Social Security Enactments

In applying the provisions of the United States Internal Revenue Code that relate to the taxes collected for old age benefits (now designated the Federal Insurance Contributions Act) contained in Subchapter A of Chapter 9 of Title 26 of the United States Code and those relating to unemployment benefits contained in Subchapter C of the same chapter and

title, there are excluded from the operation of the law payments made to persons engaged in agricultural labor. The statutes contain detailed enumerations of labor that is to be regarded as agricultural. Subchapter A and Subchapter C contain enumerations of agricultural labor that are in identical language. Those in Subchapter A are found in § 1426 (h) and those contained in Subchapter C are found in § 1607 (1).

In examining the subparagraphs in which agricultural labor is defined we find that there are four numbered paragraphs and one unnumbered one. The first subparagraph includes services performed "on a farm" and provides that such labor when performed "in connection with" certain specified activities shall be included in the term agricultural labor. The unnumbered paragraph provides that the term "farm" "shall include stock, dairy, poultry, fruit, fur-bearing animals and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities."

In Subparagraph 2 we find certain specified activities performed "in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm * * *."

In Subparagraph 3 the phrase "in connection with" again occurs with respect to specified agricultural activities.

In Subparagraph 4, instead of the phrase "in connection with" we find the phrase "in handling, planting, drying, * * *" with an added proviso that these services are to be excluded "only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits and vegetables for market." There is also a proviso excluding services performed in connection with commercial operations.

It will be noted, therefore, that the various subparagraphs specifically mentioning certain agricultural activities are not uniform in their language, paragraphs 1, 2, and 3, containing the phrase "in connection with," while paragraph 4 uses the more restricted phrase "in handling, planting, * * *."

Some of these provisions have been construed by the courts, others have not, but none have as yet been passed upon by the United States Supreme Court. It cannot be expected, therefore, that any established construction of all the provisions of the statutes will be arrived at until all have been judicially construed either by one or more circuit courts and accepted by the Bureau of Internal Revenue or until they have been finally construed by the Supreme Court, unless Congress determines that a standarized application of the law calls for a revision of the two acts.

Probably the most important decision to date interpreting a portion of the definition of agricultural labor was rendered by the Eighth Circuit Court of Appeals in the case of Birmingham, Collector v. Rucker's

Imporial Breeding Farm, Inc., of Ottumwa, Iowa, 152 F. 2d. 837. In this case the court had before it the construction of the definition of agricultural labor as applied to a hatchery. The hatchery was not located on a farm and was not operated by a cooperative association. The definition applicable to this type of activity is contained in subparagraph (3) to which reference has already been made. Insofar as it concerns a business of this character, it provides that agricultural labor shall include all services performed "in connection with the hatching of poultry." The precise question before the court was whether the wages of essential employees, not directly engaged in the hatching of poultry were to be regarded as agricultural labor within the meaning of the act. The court pointed out that the term "agricultural labor" was not defined in the original act but that its definition was added by an amendment which became effective on January 1, 1940. The amendments were enacted in 1939 by 53 Stats. 1360, 1383-1387.

The Bureau of Internal Revenue had held that the term "agricultural labor" did not apply in a case of this character. In fact the Bureau held that the term "agricultural labor" did not apply to the business of hatching poultry at all because it regarded such services as commercial and as they are not performed as an incident to ordinary farming operations. In rendering a decision in favor of the taxpayer, the court said, page 840:

> "It seems clear that Congress, in defining 'agricultural labor,' used the broad language 'services performed * * * in connection with the hatching of poultry advisedly and in the realization that the burden of taxes imposed upon hatcheries which procured their eggs from farmers and sold their chicks to farmers would have to be borne by agriculture. If Congress had intended that agriculture should be relieved of this tax burden only to the extent of the taxes upon wages paid to those rendering services in the incubation of eggs, it would, we think, have selected appropriate language to express that intent."

This decision was accepted by the Bureau of Internal Revenue for the entire country and its effect was not confined to the territory included within the Eighth Circuit. No application was made to the United States Supreme Court to review the circuit court's ruling.

In a circular issued on August 1, 1946, the Bureau stated its position which is summarized in the following language contained in the circular:

> "Accordingly, the Bureau has adopted the position that the words 'in connection with the hatching of poultry' apply to all services essential to the operation of a hatchery. Services of the nature described in the above-cited case performed after December 31, 1939, constitute 'agricultural labor' within the meaning of Sections 1426(h)(3) and 1607(1)(3) of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, respectively."

In other words, the acceptance of the decision in the Rucker case by the Bureau of Internal Revenue was confined entirely to the type of business which was dealt with in that case, namely, a hatchery.

With respect to all other business, that Bureau holds that clerical help or any other service not directly connected with agricultural work of the kind the statute specifies will not be regarded as agricultural labor and will, therefore, fall within the operation of the law and be subject to tax.

Infringement of Trademarks "Sunkist" and "Sun-Kist"

In the case of California Fruit Growers Exchange and California Packing Corporation v. Sunkist Baking Company, 68 F. Supp. 946, to enjoin a violation of the trademark of each plaintiff and for cancellation of the registrations by defendant of "Sunkist" as a trademark, the court held in favor of the plaintiffs and granted all of the relief prayed for.

From the opinion of the court it appeared that:

> "Plaintiff, California Fruit Growers Exchange, has employed the trade-mark 'Sunkist' continuously since 1907, and has sold approximately Two Billion Three Hundred Forty-two Million Five Hundred Sixty-two Thousand Nine Hundred Twenty-eight and Seventy-seven Hundredths Dollars ($2,342,562,928.77) worth of goods bearing such trade-mark, and has expended approximately Forty Million One Hundred Twenty-seven Thousand Three Hundred Seven and Ninety-seven One Hundredths Dollars ($40,127,307.97) in advertising the same.
>
> "Certificates of registration for the trade-mark 'Sunkist' have been issued by the United States Patent Office to plaintiff, California Fruit Growers Exchange, for oranges, lemons, citrus fruits, oils and acids, pectin, citrus-flavored, non-alcoholic maltless beverages as soft drinks, and concentrates for making the latter, all as set out in the Complaint in this action.
>
> "Plaintiff, California Packing Corporation, has employed the trade-mark 'Sun-Kist' since 1907, and has sold approximately Fifty Million Dollars ($50,000,000) worth of goods bearing said trade-mark, and has expended in excess of Three Hundred Fifty Thousand Dollars ($350,000) in advertising the same.
>
> "Certificates of registration for the trade-mark 'Sun-Kist' have been issued by the United States Patent Office to plaintiff, California Packing Corporation, for canned and dried fruits and vegetables, milk, butter, walnuts, catsup, pickles, olive oil, jams, jellies, olives, coffee, tea, beans, pineapple juice, grape juice, tomato juice, raisins, grapes, and various other products, all as set out in the Complaint in this action.

"The joint and concurrent use of the trade-marks 'Sunkist' and 'Sun-Kist' by both plaintiffs have eventuated under and by virtue of an agreement between them, whereby each has granted the other the right to employ the mark on the goods aforesaid."

The defendant was a partnership operating under the name of Sunkist Baking Company, and each loaf of bread which it made was "enclosed in a wrapper bearing the name 'Sunkist Baking Co.,' and also the words 'Sunkist Bread.'" The name "Sunkist Bread" appeared upon a sign on the outside of the place of business of the Sunkist Baking Company and upon the side panels of the trucks operated by them, and also upon outdoor advertising signs.

"In 1943 defendants improperly and unlawfully obtained registrations from the State of Illinois of the trade-mark 'Sunkist Bread,' Certificate No. 20,965, and from the State of Iowa for the trade-mark 'Sunkist,' Certificate No. 5,952.

* * * * * * * * *

"The use of the word 'Sunkist' by the defendants is likely to cause confusion or mistake in the minds of the public and to deceive purchasers. Bread belongs to the same general class of merchandise as the fruit and canned fruits and vegetables marketed by plaintiffs. Defendants' bread bearing the word 'Sunkist' as used by defendants would naturally or reasonably be supposed to come from plaintiffs."

The following conclusions of law were reached by the court:

"1. The trade-marks 'Sunkist' and 'Sun-Kist' are good and valid trade-marks and the certificates of registration thereof, issued by the United States Patent Office, are the property of the plaintiffs.

"2. Defendants have infringed upon the registered trade-marks 'Sunkist' and 'Sun-Kist' owned by plaintiffs by use of the name 'Sunkist' and the trade-name 'Sunkist Baking Company.'

"3. Defendants have competed unfairly with plaintiffs, and defendants have been guilty of unfair trade practices in employing the word 'Sunkist' in defendants' trade-name, and in affixing the word 'Sunkist' to the labels and wrappers on bread and buns sold by defendants.

"4. The court has jurisdiction of the action for unfair competition by reason of the diversity of citizenship of the parties and the amount involved, being more than Three Thousand Dollars ($3,000), exclusive of interest and costs.

"5. Defendants have not distinguished this action from the ruling of the Circuit Court of Appeals for this Circuit in California Fruit Growers Exchange and California Packing Corporation v. Windsor Beverages, Ltd. et al., 118 F.2d 149.

"6. Defendants Joseph A. Gallagher and Francis J. Coyle have been dismissed and are no longer parties to this action.

"7. Plaintiffs are entitled to the relief prayed for in their Complaint, including a mandatory injunction requiring the cancellation of the registrations of the 'Sunkist' trade-mark by defendants."

Measure of Damages

In the case of Consumers Cooperative Association v. Sherman, ____Neb.___, 25 N.W.2d 548, it appeared that the Association had sold a substantial quantity of cartons to the defendant, with the understanding that like cartons would be returned to the Association. The defendant returned a quantity of cartons but they were not of the same grade and quality as the cartons that had been furnished by the Association.

The court proceeded upon the theory that the cartons which were returned were not returned and accepted by the Association as satisfaction for the claim of the Association against the defendant for cartons of a grade and quality equal to that which the Association had furnished the defendant. The Association prevailed in the trial court and the defendant appealed. In affirming the judgment of the trial court, it was said in part:

> "The basis of the plaintiff's right to recover was submitted to the jury by the following instruction: 'You are instructed that your verdict in this case must be for the plaintiff and the amount of the verdict must be the difference between the value of the cartons furnished by the plaintiff to the defendant and the value of the cartons returned by the defendant to the plaintiff plus the reasonable cost of loading and unloading said cartons by the plaintiff and any express charges shown to have been paid on any of said cartons by the plaintiff. To the amount so found by you, should be added interest at the rate of 6% per annum from October 11, 1944, to this date.'
>
> "The basis of plaintiff's right to recovery is stated in 25 C.J.S., Damages, §79, page 586, as follows: 'The measure of damages for breach of a contract * *, where the contract is to pay specific property, * * * is the value of the property at the time of the breach.' Also, as stated in 15 Am. Jr., Damages, §59, page 464, as follows: 'If the agreement is to pay a sum of money in specific property at all events, as distinguished from a sum of money in property, the measure of damages is the value of the property when payment is due.' This same principle is announced in Knoechelmann's Administrator v. Knoechelmann, 242 Ky. 662, 47 S.W.2d 534, as follows: 'When an obligation is to be discharged by transfer of specific property which has been placed beyond reach of parties, [of] or process of court, value of property at time of breach may be recovered.' Of course, as in the instruction provided, from this must be deducted the value of the property returned by the defendants.

"The application of this rule is clearly set out in one of the instructions offered by defendants by the following language: 'If you find that the defendants agreed to return to plaintiff a like number of V-1 cartons, or the same kind of cartons plaintiff delivered to the defendants, then you should determine the difference in value between the cartons plaintiff delivered to defendants and the cartons defendants returned to plaintiff.'

"Under this instruction, as given by the court, the verdict of the jury finds ample support in the evidence which has already been sufficiently set forth."

Fair Labor Standards Act - Electric Cooperatives

In the case of Phillips v. Meeker Cooperative Light and Power Association, 63 F. Supp. 733, it appeared that certain employees of the Meeker Co-operative were seeking overtime compensation under Section 7 of the Fair Labor Standards Act (29 U.S.C.A. 201 et seq.). This proceeding was consolidated with an action instituted by the Renville-Sibley Cooperative Power Association against two of its employees seeking a declaratory judgment that the Fair Labor Standards Act was inapplicable thereto, and seeking to restrain these employees from enforcing any right under that Act.

The court held that all of the employees of the two cooperatives were under the Fair Labor Standards Act, and said:

"The following questions are presented in both cases:

"1. Are the so-called outside employees of these cooperative companies engaged in the production of goods for commerce within the purview of the Act?

"2. Are the office employees of the two cooperative companies engaged in the production of goods for commerce and are they also engaged in commerce within the meaning of the Act?

"3. Are the employees of these two cooperatives exempt from the Wage and Hour provisions of the Act under Section 13(a) (1) (2) thereof?"

Each of the cooperatives obtained the electricity that it was engaged in distributing, from municipally owned power plants. The operations of neither electric cooperative crossed State lines, but the operations of each electric cooperative were confined to the State of Minnesota.

The basis for the court's decision was the fact that electric current furnished by each of the cooperatives was used to a restricted extent by concerns that were engaged in the production of goods for sale in interstate commerce, and also apparently because each of the cooperatives had borrowed money of the Rural Electrification Administration, then located in St. Louis, Missouri, and had extensively used the mails for communicating with that Administration. The fact that the amount of

electric current used for the production of goods for sale in interstate commerce was relatively small was held to be of no consequence. The court said in part:

> "Were the employees of these two cooperatives employed in the maintaining of the power lines engaged in the production of goods for commerce? Manifestly, if these employees were engaged in an occupation necessary to the production of goods for commerce, then the question must be answered in the affirmative. Section 3(j) of the Act provides that 'an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.' It may be helpful to consider first whether any of the consumers of these two cooperatives are producers of goods for commerce, and, if so, the relationship which exists between these maintenance employees and such producers. In the Meeker case, among the consumers are four creameries located at Manannah, Rosedale, Forest City, and North Kingston, Minnesota. These four creameries are entirely dependent for their operation on the electrical current furnished by this cooperative. As an example, the creamery located at Manannah uses some seven motors in its operations. Approximately one-half of all the butter produced in this creamery is shipped out of the State. The hatchery which obtains its electrical power from this cooperative operates its incubators and brooders with electrical current. It sells about ten thousand chickens a year and approximately 95 percent of this number are shipped out of the State. There are about three hybrid seed-corn processors. While the hybrid seed-corn growers use the electricity purchased for general farming operations, they also use electrical power for the shelling and drying of hybrid seed corn. Most of the seed corn is sold locally to dealers who sell it intrastate. However, one of the growers produces and sells about eighty thousand bushels a year, and between one-fourth and one-third of this amount is shipped directly to purchasers in other States. There are some three fur farms, and they use electrical power in grinding animal food, lighting the buildings and grounds, and pumping the necessary water for the animals. Two of the breeders ship their pelts to other States. The third ships a substantial amount in interstate commerce. Without considering the farmers who raise various types of grains and produce which eventually find their way into interstate commerce, either directly or indirectly, it seems clear that the consumers heretofore referred to are producing goods for interstate commerce. The butter, the seed corn, the chicks, and the fur pelts move out of the State and are therefore subject to the Act. The electrical current supplied by the defendants furnishes the power and the light with which all carry on these operations. If the current is cut off, the operations cease. Without suitable facilities in serviceable condition, such as poles with cross-arms, the wires, transformers, and other electrical devices, electrical current could not get to these consumers, and it seems evident that the maintenance crew are directly responsible for the electrical energy's arriving to the

consumer. Their services in repairing and maintaining the lines are not only necessary but indispensable to the continuity of this service. Without them, no consumer would be safe in relying on this power for his operations. Dairy in their activities in repairing, maintaining, and servicing these lines, they insure the uninterrupted flow of electrical energy to the consumer. Their work, therefore, is directly necessary to the production of goods which the consumer sends directly or indirectly into the channels of commerce. Such relationship is not remote or tenuous, but direct and vital. The causal connection between their work and the production of goods for commerce by the aid of electrical energy is just as direct as that which exists between the engineer who services the steam boiler in a steam plant and the production of goods where steam is the power utilized for that purpose. The fact that these maintenance employees are not engaged in the physical process of producing goods for commerce is not determinative of their rights in view of the plain and unambiguous language of the statute, which embraces all employees whose work is necessary to the production of goods for commerce. The relationship, therefore, between the men who insure the continued flow of electrical energy and the producers of goods who use electrical energy in the production of goods for commerce seems so close and immediate that it must be considered to be the one which is embraced within the intent of Congress when it extended coverage of the Act to these employees necessary to the production of goods for commerce. Generally speaking, the test, of course, is whether the employees' work bears such relationship to the production of goods that it is necessary thereto. When Congress provided that the employees necessary to the production of goods for commerce should be within the Act, it unmistakably indicated that the factual basis is less rigid and narrow for such a relationship than that which would be required in order to justify a finding that an employee was engaged in commerce. Davila v. Porto Rico Ry. Light & Power Co., 1 Cir., 143 F2d 236. The analogy between the instant situation and the facts which were before the Supreme Court in Kirschbaum Co. v. Walling, 316 U.S. 517, 62 S.Ct. 1116, 86 L.Ed. 1638, and Warren-Bradshaw Co. v. Hall, 317 U.S. 88, 63 S.Ct. 125, 87 L.Ed. 83, amply supports the conclusions indicated herein. It would seem that the activities of the maintenance employees of these cooperatives bear as 'close and immediate tie with the process of production for commerce' as the building maintenance workers in Kirschbaum Co. v. Walling, supra, 316 U.S. at page 525, 62 S.Ct.. at page 1121, 86 L.Ed. 1638, and the members of the rotary drilling crew of an independent contractor who drilled the oil wells to a depth short of the oil sand stratum in Warren-Bradshaw Co. v. Hall, supra. Granted that it may be difficult to determine with any mathematical certainty the line of demarcation between employees who are too remote from the production of goods for commerce and those who should be considered direct and immediate to such production, so as to be considered necessary within the meaning of the Act, it would seem that, in light of the broad construction given to this remedial legislation by the Supreme Court in the cases just referred to, any question as to the status of these employees

under the Act has been set at rest. See, also, Bracey v. Luray, 4 Cir., 138 F.2d 8; Schmidt v. Peoples Telephone Union, 8 Cir., 138 F.2d 13; Reynolds v. Salt River Valley Water Users Assn., 10 Cir., 143 F.2d 863; New Mexico Public Service Co. v. Engel, 10 Cir., 145 F.2d 636; Walling v. Roland Electrical Co., 4 Cir., 146 F.2d 745."

In referring to the office employees of each of the electric cooperatives, the court declared:

"But, moreover, it must follow that these office employees are themselves engaged in commerce and in producing goods for commerce. The correspondence, reports, and other documents which they prepare, handle, and forward to the St. Louis office of the R.E.A. constitute commerce. The very nature and character of the supervision which the R.E.A. demands over the expenditures of the funds allotted to these cooperatives requires a continuous and constant flow of articles in commerce. This seems evident from the undisputed facts. Correspondence, reports, fiscal statements, checks, and other documents pass to and from the St. Louis office and are 'goods produced for commerce.' The Act defines goods to mean 'goods * * *, wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof.' §3(i). As stated in Fleming v. Jacksonville Paper Co., 5 Cir., 128 F.2d 395, 398: '* * * Those who work either at selling or delivering across State lines, or at buying and receiving across State lines, are employed in commerce, whether they write the letters, keep the books, or load and unload or drive the trucks. * * * And the purchase of goods to be transported across States lines is interstate commerce as truly as the transportation itself. Currin v. Wallace, 306 U.S. 1, 59 S.Ct. 379, 83 L.Ed. 441 * * *.'"

The electric cooperatives urged that they were local retail or service organizations and hence were exempt from the Fair Labor Standards Act. In this connection the court said:

"They contend that they are merely buying electrical current and selling it, and that that which is sold passes out of existence in this State. They contend, therefore, that the employees come expressly within the language of Section 13(a) (1) (2) of the Act. Section 13(a) provides: 'The provisions of Sections 6 and 7 shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, * * *.'

"Under Section 13(a) (2), the exemption embraces 'any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce.'

* * * * * * * * *

"* * * These cases are practically unanimous that the retail or service establishment exemption is limited in its application to such establishments as the corner grocery, the drug store, local

garage, barber shop, and local service concerns of that character. Schmidt v. Peoples Telephone Union, supra; New Mexico Public Service Co. v. Engel, supra; Reynolds v. Salt River Valley Water Users Ass'n, supra; Walling v. Roland Electrical Co., supra; Bracey v. Luray, supra; Brown v. Minngas Co., supra; Strand v. Garden Valley Telephone Co., supra. As stated in the Schmidt case (page 15 of 138 F.2d): '* * * We do not think that Congress used the term "service establishment" in its broad sense, which would include public utilities such as railroads, gas and electric companies, telephone and telegraph companies, and the like. In its narrower sense the term applies to an altogether different class of businesses, such as restaurants, hotels, laundries, garages, barber shops, beauty parlors, funeral homes, shoe-shining parlors, clothes pressing clubs, and the like. * * * "

On appeal to the Circuit Court of Appeals (Meeker Cooperative Light and Power Association v. Phillips, 158 F.2d 698) the decision of the court below was affirmed, but the appellate court did not adopt the opinion of the court below to the effect that the office employees "are themselves engaged in commerce."

Death of Employee - Workmen's Compensation Act

In the case of Fort Pierce Growers Association, et al. v. Storey, et al., ____Fla._____, 29 So.2d 205, the Supreme Court of Florida found that a former employee of the Association was entitled to recover under the Workmen's Compensation Act of that State.

The employee had been killed by lightning when he sought shelter under a tarpaulin which had been provided by the employer and which was suspended between trees which were higher than surrounding growth, and this thereby increased the hazard of injury by lightning. In brief, it was held that the death of the employee resulted in a compensable "accident arising out of and in the course of employment."